United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-7632

75-7632

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NEW WATCH-DOG COMMITTEE, THOMAS M. IANDOLI, RAY CANNON, JAMES NITECKI, ERNESTO ISAAC, PETER BEHRENS, ANTHONY FASOLINA, AL BERNSTEIN, MATTHEW RICCARDELLO, HARVEY McLEMORE, EARL WINTHAL and JOHN HAJEK, on behalf of themselves individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

vs.

HARRY VAN ARSDALE, JR., President, CHARLES BONO, BEN GOLDBERG, HARRY MENDEZ, ROBERT J. PANCALDO, ELIAS RICK, HOWARD WILLIAMS, Vice Presidents, JOSEPH PARADISE, Secretary, RICHARD WM. ROGERS, SR., Recording Secretary, HERMAN MEYERS, Treasurer, SID PACK, LUIS PEREZ, SAM EASTMAN, LEONARD FINE, ALBERT A. FOSTER, PETER TANNENBAUM, ARTHUR STRICKLAND, EDWARD ZARR, Executive Council Members, as officers of the NEW YORK CITY TAXI DRIVERS UNION, Local 3036, AFL-CIO, and individually; NEW YORK CITY TAXI DRIVERS UNION, LOCAL 3036, AFL-CIO, GEORGE MEANY, President, LANE KIRKLAND, Secretary Treasurer, JOSEPH D. KINNAN, PAUL HALL, PAUL JENNINGS, A. F. GROSPIRON, PETER BOMMARITO, FREDERICK O'NEAL, JERRY WURF, JAMES T. HOUSEWRIGHT, MARTIN J. WARD, JOSEPH P. TONELLI, C. L. DELLUMS, RICHARD F. WALSH, I. W. ABEL, MAX GREENBERG, MATHEW GUINAN, PETER FOSCO, FLOYD E. SMITH, S. FRANK RAFTERY, GEORGE HARDY, WILLIAM SIDELL, ALBERT SHANKER, FRANCIS S. FILBEY, LEE W. MINTON, HUNTER P. WHARTON, JOHN H. LYONS, C. L. DENNIS, THOMAS GLEASON, LOUIS STULBERG, ALEXANDER J. ROHAN, AL. H. CHESSER, MURRAY H. FINLEY, SOL STETIN, GLENN E. WATTS, Executive Council Members, as officers of the American Federation of Labor and Congress of Industrial Organizations, and individually; the AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Defendants-Appellees.

BRIEF FOR DEFENDANTS-APPELLEES AFL-CIO, GEORGE MEANY, ET AL.

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BRIEF FOR DEFENDANTS-APPELLEES
AFL-CIO, GEORGE MEANY, ET AL.

Preliminary Statement

This is an appeal from a summary judgment in favor of defendants rendered after a motion by plaintiffs for a preliminary injunction. On the argument of the motion, both sides agreed that there were no factual issues between them and that the District Court might treat the matter as a motion and cross-motion for summary judgment (Jt. App. 57).* That Court (Hon. Lee Gagliardi) held that defendants were entitled to summary judgment on the purported federal claim. Inasmuch as the case had been initiated less than three weeks earlier and no litigation proceedings had taken place other than the motion which exposed the lack of any federal claim, the Court

* Page references to the Joint Appendix are preceded by "Jt. App." Page references to the Joint Exhibit Volume are preceded by "Jt. Exh. Vol." In the case of lengthy exhibits, the pertinent page numbers are indicated in parentheses following the appropriate citation to the Joint Exhibit Volume.

thereupon dismissed the accompanying pendent state claims without reaching their merits (Jt. App. 54-56).

Issues Presented

1. Whether the AFL-CIO, in prescribing minimum dues payable by members of local unions directly affiliated with it, is excepted from the requirements of Section 101(a)(3) of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA" or "Landrum-Griffin Act") stating the procedures by which certain union dues may be increased.

2. Whether the Court below abused its discretion in dismissing the pendent state claim alleged by plaintiffs.

STATEMENT OF THE CASE

Plaintiffs are members of the New York City Taxi Drivers Union, Local 3036, AFL-CIO. This Local is "directly affiliated" with the AFL-CIO, meaning that it is not affiliated with a national or international union which in turn is chartered by the AFL-CIO but is directly chartered by the AFL-CIO itself. Thus the AFL-CIO, not some international union, is its "parent" body (Jt. App. 27).

As a directly affiliated union, Local 3036 is subject to the Rules Governing Directly Affiliated Local Unions promulgated by the AFL-CIO Executive Council, the Federation's highest governing body between Conventions. The Executive Council, in turn, is empowered to promulgate such rules by the AFL-CIO Constitution (Jt. App. 27-29, 52-53; Jt. Exh. Vol. 12 (p. 38), 16, 17).

Prior to the enactment of the LMRDA and continuously to the present time, the AFL-CIO Rules Governing Directly Affiliated Local Unions ("the Rules") have specified the minimum dues to be charged by directly affiliated local unions ("DALU") to their members (Jt. Exh. Vol. 15 (p. 4)). In July, 1975 the AFL-CIO Executive Council increased the minimum Local dues specified in the Rules to $6.00 per member per month, effective November 1, 1975 (Jt. App. 52; Jt. Exh. Vol. 14 (p. 44)). Although not required by the AFL-CIO Constitution and procedures, this increase was in fact reported by the Executive Council to the most recent regular Convention of the AFL-CIO held in October, 1975; and the report of the Executive Council was unanimously approved by the Convention (Jt. App. 52-53; Jt. Exh. Vol. 14 (p. 44), 13 (pp. 15-21)).

The Secretary-Treasurer of the AFL-CIO advised each directly affiliated local of the Executive Council action in a nctice stating that "effective November 1, 1975, each Directly Affiliated Local Union shall collect membership dues of not less than six dollars ($6.00) per member per month" (Jt. Exh. Vol. 1).* Pursuant to the mandate of its parent, Local 3036 notified the local membership of the new dues requirement (Jt. Exh. Vol. 2). This action followed.

Plaintiffs' complaint and moving papers asserted that (1) the AFL-CIO action violated a right of Local 3036 members under LMRDA to approve or disapprove any local union dues increases by secret ballot vote and (2) the AFL-CIO, in mandating minimum membership dues for all directly affiliated local unions, either exceeded its powers under its own Constitution or failed

* This increase thus applied not only to Local 3036 but to all of the AFL-CIO's approximately 150 directly affiliated local unions.

to follow its own prescribed procedures. Admittedly the second contention seeks to allege a pendent state claim and not a cause of action founded in federal statute.

The Decision Below

The Court below held that Section 101(a)(3) of the LMRDA -- the only federal statute regulating procedures for imposing union dues increases -- expressly excludes "a federation of national and international organizations" from the coverage of the entire section. Both the plain meaning of the statute and its specific legislative history demonstrate that the AFL-CIO is "a federation of national and international unions." Accordingly, held the Court, the federal statute invoked by plaintiffs is inapplicable, and the AFL-CIO remains free to regulate the dues structure of its directly affiliated local unions, subject to any state claims.

With regard to the alleged state cause of action, the Court below observed that if the federal claim is insubstantial, a district court in its discretion may dismiss any pendent claims. Here, in a case less than three weeks old, Judge Gagliardi concluded that under the tests prescribed by this Court, "there is no reason to warrant the retention of the pendent claims." Accordingly, without reaching their merits, he dismissed these claims (Jt. App. 54-56).

I

THE AFL-CIO IS CLEARLY AND SPECIFICALLY EXCEPTED FROM THE LANDRUM-GRIFFIN ACT REQUIREMENTS PRESCRIBING METHODS BY WHICH DUES MAY BE INCREASED.

A. On Its Face the Statutory Language of §101(a)(3) of the LMRDA Excepts the AFL-CIO from the Requirements of That Section.

Congress in §101(a)(3) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §411(a)(3), dealt specifically with the procedures by which labor organizations may increase membership dues. That is the only federal statute which limits the power of unions to establish their own dues procedures. In language that could not be more plain, that Section begins by specifically excluding from its terms "a federation of national and international labor organizations":

> "(3) DUES, INITIATION FEES, AND ASSESSMENTS.-- Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessment shall be levied upon such members, except--
>
> > (A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or
> >
> > (B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal

> office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: Provided, that such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization."

The legislative reports specifically state that this exclusionary language was intended to refer to the AFL-CIO. The statutory analysis prepared by the Senate Committee on Labor and Public Welfare stated:

> "Federations of national or international unions like the AFL-CIO, are specifically excluded from the requirements of this paragraph [§101(a)(3)]," National Labor Relations Board Legislative History of the Labor-Management Reporting And Disclosure Act of 1959 (G.P.O. 1959) (hereinafter "Leg. Hist."), Vol. I, p. 949.*

As the Senate Committee analysis recognizes, the purpose of the initial phrase of §101(a)(3) is to manifest Congress' intent to except the AFL-CIO from the limitations imposed by the remainder of the provision on the freedom labor organizations had previously enjoyed to change dues in any manner permitted by their Constitutions and state law; the purpose of the balance of the initial paragraph and subsection (A) is to declare the general rule that local organizations can increase membership dues only through the two procedures specified; and the function of the balance of the initial paragraph and subsection (B) is to provide that the remaining

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* Indeed, the complaint herein describes the AFL-CIO by utilizing the very phrase contained in §101(a)(3): "a federation of national or international labor organizations" (Jt. App. 27).

class of labor organizations -- those "other than a local organization or a federation of national or international unions" -- can increase membership dues only through the three procedures specified there.

B. The Evolution of §101(a)(3) During the Legislative Process Confirms the Congressional Intent to Except the AFL-CIO from the Requirements of That Section.

The legislative history of §101(a)(3) demonstrates that the AFL-CIO's exception from the requirements stated by §101(a)(3) represents a considered legislative judgment. The path followed by Congress was from no exception for the Federation, to language which apparently but not certainly would have excluded the AFL-CIO from §101(a)(3)'s limitations, to the final decision to begin the entire Section with the phrase "Except in the case of a federation of national or international labor organizations ***" which assured that the Federation would not be covered by any part of the Section.

The original bill (S. 1137) introduced by Senator McClellan and referred to the Committee on Labor and Public Welfare defined the term "labor organization" broadly enough to include the AFL-CIO, permitted labor organizations to change dues and initiation fees "only after due notice and a general vote", and contained no exclusion from this requirement in favor of the Federation. (I Leg. Hist. pp. 262, 269.) The bill reported out by the Committee (S. 1555) did not regulate at all the process of setting and changing dues. (See I Leg. Hist. pp. 338-396.) On the floor, Senator McClellan offered an amendment

to S. 1555 the purpose of which was to add a new Title I entitled a "Bill of Rights of Members of Labor Organizations". Section 101(a)(4) of the McClellan amendment provided:

> "(4) FREEDOM FROM ARBITRARY FINANCIAL EXACTIONS.--(A) The rates of dues and initiation fees payable by members of any such labor organization in effect on the effective date of this subsection shall not be changed, and no new or additional dues or initiation fees shall be imposed and no special or general assessment shall be levied upon such members, except upon (i) majority vote by secret ballot of the members present at a general membership meeting held after not less than fifteen days' written notice to each member at his last known address, or by majority vote of the membership by referendum conducted upon such notice by secret ballot through the mails, in the case of a local labor organization, (ii) majority vote of the delegates present at a general meeting of duly chosen delegates held after not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, in the case of a national or international labor organization." (II Leg. Hist. p. 1102)

That amendment, including §101(a)(4) as introduced, was agreed to by a vote of 47 to 46. (II Leg. Hist. p. 1119.) Thereafter, however, Senator Kuchel proposed a series of perfecting amendments to Title I. (II Leg. Hist. pp. 1229-1232.) One of these redesignated as §101(a)(3) the provision dealing with the procedure for changing dues and redrafted the portion beginning with "(i)" to read:

> "(i) by a majority vote by secret ballot of the members in good standing present at a general or special meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a referendum conducted by secret ballot through the mails, or (iii) in the case of a national or international labor organization, other than a federation of national and international organizations, by majority vote at a regular convention or a special convention held after not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice." (II Leg. Hist. p. 1232.)

This provision commanded such broad support that a full reading was dispensed with (II Leg. Hist. p. 1232), and an explanation was deemed unnecessary. The Kuchel amendments were adopted by a vote of 77 to 14 (II Leg. Hist. p. 1239). There were no further modifications of §101(a)(3) prior to Senate passage of S. 1555. (See I Leg. Hist. pp. 519-520.)

The placement of the language excepting "a federation of national or international unions" from the requirements of §101(a)(3)(A)(iii) of S. 1555 as it passed the Senate could have been said to create an ambiguity as to whether the intent was to permit such a federation to raise dues in a manner not specified in §101(a)(3) but permitted by its Constitution and laws, or to deny a federation the benefit of the alternative procedure stated in subsection (iii).

The sole relevant development in the House was a further modification of §101(a)(3) that makes it absolutely plain that the legislative intent was to place no federal inhibitions on the AFL-CIO's pre-existing freedom to adopt its own procedures for changing dues.

The bill (H.R. 8342) reported by the House Committee on Education and Labor, and the substitute for that bill sponsored by Representatives Landrum and Griffin (H.R. 8400), the measure ultimately adopted by the House, and the competing bill introduced by Representative Shelley (H.R. 8490), contained identical definitions of "labor organization" broad enough to include the AFL-CIO (see I Leg. Hist. pp. 625, 693, 872), and a §101(a)(3) redrafted in the exact language now contained in the LMRDA (set out at pp. 5-6, supra). (See I Leg.

Hist. pp. 629, 630, 697-698, 876-877.)

H. Rep. No. 741 on H.R. 8342, 86th Cong., 1st Sess., explained:

> "Section 101(a)(3): Stipulates that except in the case of a federation of national or international labor organizations the rates of dues and initiation fees payable by union members presently in effect shall not be increased, and no general or special assessment shall be levied upon union members, except (1) in the case of a local labor organization, (a) by a majority vote by secret ballot on such question at a general or special membership meeting called after reasonable notice or (b) by a majority vote of the members voting in a membership referendum conducted by secret ballot; or (2) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (a) by a majority vote of the delegates voting at a regular or special convention, the latter to be held upon not less than 30 days' written notice to the principal office of each local union entitled to such notice, or (b) by majority vote of the union members voting in a membership referendum conducted by secret ballot, or (c) by majority of the members of the union executive board or other governing body, pursuant to the union constitution and bylaws. However, such action on the part of the union executive board or governing body shall be effective only until the next regular convention of the labor organization." (I Leg. Hist. p. 787.)

Since §101(a)(3) was not a subject of controversy, its meaning was not amplified further, and it was adopted by the House as proposed. (See II Leg. Hist. pp. 1691-1692, 1694.)

In Conference the House version of §101(a)(3) prevailed. The Statement of the House Managers states simply:

> "SECTION 101 -- BILL OF RIGHTS
>
> "This section of the Senate bill and the House amendment, for the most part, contain similar provisions. In all instances where there are differences between the Senate bill and the House amendment the conference substitute follows the House amendment." (I Leg. Hist. p. 935.)

And, as already noted, the Senate analysis explicitly declares:

> "Federations of national or international unions like the AFL-CIO are specifically excluded from the requirements of this paragraph [§101(a)(3)]". (I Leg. Hist. p. 949.)

Congress' determination to except the AFL-CIO from the limitations of §101(a)(3) is merely one example of the legislative recognition that it was neither necessary nor appropriate to apply every rule stated in the LMRDA to federations of national and international unions. See also Title III (Trusteeships) discussed in Colorado Labor Council, AFL-CIO v. AFL-CIO, 481 F.2d 396 (10th Cir. 1975); and Title IV (Elections), §401 of which, 29 U.S.C. §481, states:

> "SEC. 401 (a). Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.
>
> "(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.
>
> "(c) Every national or international labor organization, except a federation of national or international organizations, and every local labor organization, and its officers, shall be under a duty, *** to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature *** ".

Thus, three of the five Titles of the LMRDA that regulate internal union affairs recognize and take into account the special situation of the AFL-CIO. The plan of the Landrum-Griffin Act is therefore to "include Federations, such as the American Federation of Labor and Congress of Industrial Organizations *** in [the] category [labor organizations]", 29 CFT §451.4(c), thereby subjecting the AFL-CIO generally to the

provisions of the Act, while specifically excluding federations from certain of the limitations imposed by federal law. These determinations not to extend the LMRDA to a further point constitute the "'line drawing' familiar *** in the legislative process: 'thus far but not beyond.'" (United States v. 12 200-Ft Reels of Film, 413 U.S. 123, 127 (1973)).

C. International Unions, Which Are Subject to the Limitations of §101(a)(3), Have Power to Set Minimum Membership Dues Payable to Their Affiliated Local Unions; the AFL-CIO, Which Is Not Subject to Those Limitations, Certainly Has No Less Power.

The essence of the plaintiffs' theory is that §101(a)(3) is intended to guarantee that a "Local Union must hold a secret ballot vote at a membership meeting or secret ballot membership referendum to increase dues". (Pltf. Br. p. 16; see also pp. 18, 20-21, 23.) But the uniform understanding is that Congress did not intend such a guarantee even with regard to members of locals chartered by international unions rather than directly by the AFL-CIO. The Courts, without exception, have sanctioned the right of national and international unions, which are subject to §101(a)(3), to impose a minimum membership dues rate upon their chartered locals. Ranes v. Office Employees International Union, Local 28, 317 F.2d 915 (7th Cir. 1963); United Brotherhood of Carpenters v. Brown, 343 F.2d 872, 885-887 (10th Cir. 1965); Sawyers v. IAM, 279 F.Supp. 747, 758-759 (E.D. Mo. 1967); White v. King, 319 F.Supp. 122 (E.D. La. 1970); White v. Local 207, Laborers, 387 F.Supp. 53 (W.D. La. 1974). To be sure, those national and international unions must follow the procedures set

by that Section. But the important point is that when they do so, each affiliated local union must conform, and the local membership is bound to the new minimum dues structure without any statutory right to a membership vote on the question.

In a well-reasoned opinion, the Ranes court first noted that subsection (A) of §101(a)(3) (dealing with local union procedures for increasing membership dues) and subsection (B) (dealing with international union procedures), on their face, state alternate methods of increasing dues.

> "Section 101(a)(3) relates, in its entirety, to 'the rates of dues and initiation fees payable by members of' labor organizations. It provides that rates of dues in effect on September 14, 1959, may not be increased except by the methods therein prescribed. The method prescribed for increases in dues by a local union is a majority vote of its members. On the other hand, subsection (B) prescribes alternative methods by which an international union may increase 'rates of dues', which include the submission of the question to the delegates at its convention." (317 F.2d at 917.)

The Court then noted that in 1959 many international unions did, in fact, impose minimum membership dues, and explicated the sound policy reasons for that practice:

> "Traditionally, international unions have exercised primary jurisdiction over affairs of their affiliated local unions, including the control of the local dues structure sufficient to insure the financial health of the union structure. Many international unions exercise control in the latter sphere of interest by the device of prescribing the minimum rate for the dues which each of their locals shall collect from its members. We cannot assume that Congress was unaware of the traditional structure and dues practices of labor unions when it enacted 101(a)(3), or that Congress, being aware of the traditional structure and practices, intended by enacting that Section to strip international unions of their traditional power to control the minima and maxima of rates of dues without one word in the Committee Reports expressing that intention. On the

> contrary, we must assume that Congress was aware of the established structure and practices and interpret the statute in the light thereof. Cf. Perrine v. Chesapeake & D. Canal Co., 9 How. 172, 50 U.S. 172, 187-188, 13 L.Ed. 92; Local 1976, Etc. v. N.L.R.B., 357 U.S. 93, 98-101, 78 S.Ct. 1011, 2 L.Ed.2d 1186." (Id at 918.)

The Ranes Court therefore "rejected [the] argument that [§101(a)(3)(B)] should be interpreted to apply to per capita taxes" but not dues, and held that:

> "the action of an international union pursuant to Section 101(a)(3)(B) of the Act increasing the constitutional minimum for dues payable by its members to their respective local unions can be enforced by an affiliated local union without first submitting the question of a dues increase to a vote of its members under the provisions of Section 101(a)(3)(A) of the Act." (Id. at 917.)

As Ranes and similar decisions hold, internationals subject to §101(a)(3) are entitled, through Executive Council and Convention action, to set minimum membership dues binding on their locals without any local membership vote. Nevertheless, plaintiffs argue that because §101(a)(3) is inapplicable to the AFL-CIO, the Federation lacks the power to mandate minimum dues for its directly affiliated locals, and, therefore, the provisions of that Section applicable to local union dues increases are controlling. That argument is admittedly premised on the view that §101(a)(3) is a "grant of power", rather than a limitation upon power (Pltf. Br. pp. 25, 27). Nobody reading either the LMRDA or its legislative history could reasonably reach this conclusion. On plaintiffs' theory, only the AFL-CIO, by reason of the very statutory exclusion which was clearly intended to favor, not disfavor, it would be unable, through action as a parent body, to assure the financial health and stability of its own chartered locals.

Truly, this would be standing the statute, to say nothing of Congressional intent, upon its head.

Significantly, plaintiffs point to no other statute, case authority, or legal principle which would debar the AFL-CIO from imposing minimal dues on its directly affiliated locals pursuant to its own Constitutional procedures, and none exists. In short, absent statutory restriction -- and there is no statutory restriction applicable to the AFL-CIO -- the Court below was correct in concluding that the Federation is free to act as it did without violating federal law.

D. Plaintiffs' Contentions As to the Applicability of Section 101(a)(3) Are All Without Merit.

We believe that the language of §101(a)(3), its legislative history and the judicial decisions in Ranes and its progeny demonstrate the fallacies in plaintiffs' case. We have therefore set out these materials to speak for themselves rather than addressing each point made in plaintiffs' brief. Nevertheless, it is perhaps not inappropriate to conclude by treating with plaintiffs' specific contentions.

With regard to the language of the Section, plaintiffs argue that the second "except" in the initial paragraph of §101(a)(3) demonstrates a Congressional intent to require a membership vote as the precondition for an increase in dues payable to a local union directly affiliated with the AFL-CIO. (Pltf. Br., pp. 21-22.) This distorts the structure of the entire provision. The second "except" conditions the flat prohibition against the increase of dues by those labor

organizations covered by the Section -- local, intermediate and international unions -- and introduces the permitted methods of increasing dues allowed local, intermediate and international unions in subsections (A) and (B). The mention of "a federation of national and international labor organizations" in subsection (B) is simply designed to eliminate any apparent or arguable inconsistency with the overall exclusion at the outset of the Section: (B) covers all labor organizations other than local unions -- a description that would otherwise include a federation of national and international unions -- and the reference to such a federation in (B) merely reconfirms Congressional intent that such a federation is to be excluded from the entire Section and not governed by the procedures specified in (B). No such reference is contained in subparagraph (A) because a federation of national and international unions could not conceivably be considered "a local labor organization." Thus the phrase "other than a local labor organization or a federation of national or international labor organizations" in (B) is a consequence of the draftsman's decision to begin that paragraph with the all-encompassing term "labor organization" (a decision undoubtedly prompted by the desire to include intermediate bodies, such as regional councils, in (B)), rather than following the form of subparagraph (A) which refers only to "a local labor organization."

Only two comments are required concerning the plaintiffs' discussion of the legislative history. (Pltf. Br. pp. 24-29.) First, given the identity between the versions of Section 101(a)(3) proposed in each of the three bills before

the House, plaintiffs concede away their case when they argue that "The Shelley bill *** was favored by the AFL-CIO which would have given it the protection and rights it now seeks and asks that the Courts give it." (Pltf. Br. p. 26.) Second, the remark attributed to Senator Morse in the footnote at page 26 of plaintiffs' brief misstates what he said.* Senator Morse was replying to specific comments on aspects of the pending House Bill made by the Chamber of Commerce. With regard to Section 101(a)(3) he referred solely to the relationship between a federation and affiliated internationals. He did not address himself to the AFL-CIO's relationship with directly affiliated locals. Moreover, Senator Morse was an opponent of the bill who refused even to sign the Conference Report and whose comments, therefore, are no indication of legislative intent. See National Woodwork Mfrs. Ass'n v. NLRB, 386 U.S. 612, 639-640 (1967), dealing specifically with legislative remarks of Senator Morse on this very bill.

Nor does "labor history support the plaintiffs-appellants contentions". (Pltf. Br. pp. 29-30.) The plaintiffs excise the final sentence of the paragraph from Leiserson, American Trade Union Democracy, quoted at page 30 of their brief. That sentence reads: "With certain exceptions comparable to the territories and possessions of the United States, each affiliated union is a national organization self-governing like a sovereign State". And, at page 338 Professor

* Although no citation to Senator Morse's remarks is supplied in plaintiffs' brief, we have been advised by plaintiffs' counsel that he had in mind the statements made on August 3, 1959 found on p. 13681 of the Congressional Record. These appear at II Leg. Hist. p. 1326.

Leiserson explains the meaning of this sentence in a paragraph which refers directly back to page 85:

> "THE GOVERNMENTAL STRUCTURE of the AFL-CIO follows the pattern of the two federations when they operated as rival organizations. This structure and how their governments functioned were briefly outlined in Chapter V. Like them, the new federation is composed not only of national unions, but also certain local labor unions and national organizing committees or councils, which it governs much as the United States governs its territories and island possessions. These directly attached organizations are temporary arrangements (resulting from the organizing activities of the federation) until the locals can be turned over to appropriate national affiliated unions, and the councils or organizing committees can be established as new autonomous national unions within the federation."

In short, Professor Leiserson, like any informed student of the labor scene, was fully aware of the existence of local unions directly affiliated with and chartered by the AFL-CIO itself.

The Ranes decision not only demonstrates the fallacy of the plaintiffs' main contention -- that §101(a)(3) guarantees a secret ballot vote at the local union level as a precondition to every increase in local dues -- but also answers many of the subsidiary arguments made by the plaintiffs here. Thus in Ranes, as in the instant case, plaintiffs argued that Congress intended parent organizations to be free only to increase per capita taxes but not to set minimum membership dues. (Compare 317 F.2d at 918 with Pltf. Br., pp. 21, 24.) And the Ranes Court's recognition that Congress did not intend, in §101(a)(3), to invalidate the long-accepted practice by parent bodies to set minimum dues except to the extent specifically stated in the Section (317 F.2d at 917-918) is fully applicable here. Moreover, Ranes' recognition that Congress intended to preserve

that historic practice is a more than sufficient answer to the plaintiffs' alarms that if the District Court is affirmed here §101(a)(3) would be rendered meaningless. For, while the AFL-CIO set minimum dues for its directly affiliated local unions prior to enactment of the LMRDA, neither then nor now does it claim the Constitutional authority to set membership dues payable to local unions affiliated with internationals.

Finally, none of the cases relied upon by plaintiffs is in point or advances plaintiffs' position in any way. They all involve the construction of particular parts of 101(a)(3) and determinations as to whether challenged union conduct conformed to the requirements of those provisions. Inasmuch as the AFL-CIO is not subject to that Section at all, the cases cited are simply irrelevant except in one particular. All of them with the exception of the District Court opinion in Brown v. Carpenters, 52 CCH Lab. Cases 16,519 (U.S.D.C. Kans. 1964) recognize the validity of Ranes and the invalidity of plaintiffs' main contention that §101(a)(3)(A) guarantees a secret ballot vote at the local union level as a condition of an increase in membership dues. (See particularly King v. Randazzo, 346 F.2d 307 (2d Cir. 1965)). Contrary to plaintiffs' assertion (Pltf. Br. pp. 31-32), the quoted portion of the District Court's decision in Brown was reversed on the strength of Ranes, not "on other grounds". (See 343 F.2d 872, 886.)

II

THE COURT BELOW PROPERLY EXERCISED ITS DISCRETION IN DISMISSING THE PENDENT STATE CLAIM.

A. Upon Dismissing the Only Federal Claim at the Very Outset of the Lawsuit, the District Court Acted Well Within Its Discretionary Authority in Declining Jurisdiction over the Accompanying State Claim.

Although plaintiffs' brief contains a point heading asserting error in the dismissal of the pendent claim (p. 34), the argument under that point does not relate to the state claim at all, but rather to the alleged "free speech" claim with which we deal in Point III below.

In any event, it is plain that the Court below acted well within its discretion. The lawsuit had just begun. No discovery or other pretrial steps had taken place. With the complaint plaintiffs served a motion for a preliminary injunction brought on by order to show cause. On the hearing of this motion, it became apparent that plaintiffs had no federal claim. In the circumstances and under the established authorities cited in the opinion below, there was no reason to retain federal jurisdiction.

Indeed, if anyone has cause to complain about this aspect of the decision below, it is defendants not plaintiffs. For the uncontroverted facts before the District Court demonstrated that the state claim, like the federal claim, lacked any substance. Inasmuch as plaintiffs had included that claim in their complaint, the Court below could well have granted summary judgment on the entire complaint and thereby brought

this litigation to a just and proper conclusion.

Because the Court below chose not to decide the merits of the state claim, the first point in plaintiffs' brief (Point A, pp. 11-16) is devoted to a non-issue on the appeal. Nevertheless, since plaintiffs have chosen to develop this point, and despite our conviction that the merits of the state claim are not before this Court, we shall briefly treat with plaintiffs' contention so that the Court will see its lack of foundation.

B. In Increasing the Minimum Dues of Directly Affiliated Local Unions, the AFL-CIO Followed Its Own Constitution and Acted Within Its Constitutional Powers.

The pertinent provisions of the AFL-CIO Constitution and the Rules Governing Affiliated Local Unions are clear. They amply empower the Executive Council to take the action it did. And they make that action binding upon all directly affiliated locals.

Article XIV of the AFL-CIO Constitution deals expressly with directly affiliated locals. The first sentence of Section 2 of the Article reads as follows (Jt. Exh. Vol. 12 (p. 38)):

> "Sec. 2. The Executive Council of the Federation shall issue rules governing the conduct, activities, affairs, finances and property of organizing committees, national councils and directly affiliated locals, and governing the suspension, expulsion and termination of such organizations." (Emphasis supplied)

The Executive Council's rule-making authority with respect to these organizations is unlimited except insofar as the succeeding portions of Section 2 assure certain standard

notice and hearing requirements in the case of disciplinary action. The general rule-making authority is amply broad to include a rule prescribing minimum dues for directly affiliated locals. Moreover, it must be borne in mind, as the Ranes decision noted, 317 F.2d 915, 917, footnote 3, that the great bulk of AFL-CIO internationals have traditionally exercised similar powers. It would be inconceivable that the AFL-CIO, in endowing its Executive Council with the sweeping rule-making powers recited in Art. XIV, Sec. 2, intended to deprive itself of the powers over its own directly affiliated Locals routinely possessed and exercised by AFL-CIO internationals with respect to their chartered local unions.

The AFL-CIO Executive Council has long exercised the power to prescribe minimum membership dues for its directly affiliated locals. Plaintiffs' own complaint so concedes (Jt. App. 28). That power has gone unchallenged over the years, either at AFL-CIO Conventions or otherwise.

Nor can there be any question that the Rules provision is mandatory and binding on all directly affiliated locals. It reads:

> "8. Dues. Directly Affiliated Local Unions shall require their members to pay dues of not less than six dollars ($6.00) per month." (Jt. App. 28, Complaint Pars. 26 and 27, substituting the figure set by the Executive Council in July, 1975).

There is nothing optional, discretionary or precatory in this language. It does not give any affected local or the membership of any local the option of accepting or rejecting the prescribed minimum. It is, as the Rules state, a "requirement."

Similarly, and contrary to plaintiffs' contention, there is nothing in Secretary-Treasurer Kirkland's letter of August 11, 1975 (Jt. Exh. Vol. 1) indicating that locals have a choice with regard to the new minimum dues or that further local constitutional action is necessary. On the contrary, he advised that the Executive Council determined that all directly affiliated locals "shall collect" at least $6.00 per member per month. His reference to "implementing" the decision obviously refers to the necessary steps to effect collection, including informing the membership of the new figure.

The Executive Council action of July, 1975 was complete in itself and fully satisfied the requirements of the AFL-CIO Constitution.* But, in fact the written report of the Executive Council, which was distributed to all delegates at the October, 1975 regular AFL-CIO Convention in San Francisco, set forth the minimum dues increase prescribed for directly affiliated Locals (Jt. Exh. Vol. 14 (p. 44)). Moreover, the report of the Convention Committee on the Executive Council Report, which was rendered to the entire Convention, specifically mentioned this dues increase (Jt. Exh. Vol. 13 (p. 16)). And the Executive Council report was then approved unanimously by the Convention. Thus, although Landrum-Griffin dues provisions

* We fail to understand plaintiffs' contention that the AFL-CIO Executive Council took "some action" but did not amend the DALU Rules (Pltf. Br. p. 11). Admittedly the Executive Council had power to change the Rules. The only change made in the minimum local dues was to increase the figure. Action by the Executive Council increasing the figure to $6.00 necessarily amended the Rules which prescribe that figure. Both the Executive Council Report and Secretary-Treasurer Kirkland's letter to the directly affiliated locals make clear that formal, official Executive Council action was indeed taken.

are not applicable to the AFL-CIO, here they were in fact followed.

Contrary to plaintiffs' contention, there is no inconsistency between the minimum dues requirement set by the AFL-CIO and the Local 3036 Constitutional provision requiring a secret ballot vote on dues increases. Plainly the latter refers to an increase above the minimum mandated by the parent body. See Ranes, supra, 317 F.2d 915, 918, fn. 6. This is the typical provision contained in virtually all local union constitutions since 1959 and simply tracks the provisions of the LMRDA. As Ranes makes clear, such local Constitutional provisions do not affect a parent's power to prescribe binding minimum dues levels. Moreover, as with virtually all other parent-local relationships, the governing instruments of both bodies provide that in the event of inconsistency, the provisions of the parent's Constitution shall prevail (Jt. Exh. Vol. 17 (p. 3), 3 (p. 9)).

Finally, plaintiffs misstate the record and misread their own exhibits in arguing that in 1969 Local 3036 held a membership vote to approve dues increases which did not reach the minimum prescribed by the AFL-CIO in its DALU Rules. The fact is that the dues of local members working four days a week were being raised to $3.50 per month, which exceeded the then prevailing minimum set forth in the DALU Rules. Thus, the March 14, 1969 edition of the Local's newspaper, plaintiffs' own exhibit, in describing the proposed dues increase, stated (Jt. Exh. Vol. 18; see also Jt. Exh. Vol. 20):

> "Membership dues shall be $3.50 per month for each member working four (4) days or more per week."

Plaintiffs' complaint concedes that this represented a dues increase (Jt. App. 28, Par. 24). Because the figure exceeded the $2.50 minimum then prescribed by the DALU Rules, a secret ballot by the Local's membership was required by Landrum-Griffin.

Moreover, it would in any event be entirely irrelevant if the AFL-CIO in the past permitted the Local to charge below the minimum for part-time members. If the AFL-CIO chose to exonerate a portion of the dues for part-time workers during the Local's fledgling period or interpreted the minimum dues requirement as applicable to full-time workers, not part-timers, that does not detract from the power of the Executive Council under the Constitution and Rules to increase the minimum level. After receiving a subcommittee report at its July, 1975 meeting, the Executive Council made a considered decision to prescribe such an increase. Whether the $6.00 level would be deemed applicable to part-time employees is not a question presented by this case, particularly in light of the disposition made of the pendent state claim. On the question of the power of the Executive Council to prescribe binding minimum dues levels, the terms and meaning of the AFL-CIO Constitution and DALU Rules are unmistakably clear.

III

PLAINTIFFS' CLAIMS OF ABRIDGEMENT OF FREE SPEECH AND BREACH OF THE DUTY OF FAIR REPRESENTATION ARE MERE RESTATEMENTS OF THE CLAIM OF DENIAL OF THE OPPORTUNITY TO VOTE ON THE DUES INCREASE; AND THEY SHARE THE SAME LEGAL AND FACTUAL INSUFFICIENCY.

Plaintiffs' brief asserts in conclusory terms a denial of the Local membership's right to free speech and a breach of the Local's duty of fair representation. But a reading of the substance of this argument reconfirms what the complaint and moving papers reveal on their face: that these are nothing more than alternative ways of stating plaintiffs' single, basic complaint that they were not given the opportunity to vote on the increase in local dues.

Thus plaintiffs' papers contain no factual allegation of any denial of their right to speak and present no rebuttal, factual or even conclusory, to the Local's flat assertion that plaintiffs were entirely free to make their views known (Jt. App. 46). Plaintiffs' appeal brief, like their papers below, makes clear that what they have in mind is not speech itself but discussion preparatory to a §101(a)(3)(A) vote. No one has challenged or abridged plaintiffs' right to talk; what they seek is a federally sanctioned right to vote, not to speak. But it is precisely this asserted right which, in the admitted facts of this case, they so plainly lack.

Similarly, when plaintiffs complain that they were denied "fair representation," all they mean is that they were denied a vote on the dues increase. Again, they have merely cloaked the same claim in different form.

In short, once it becomes clear that the AFL-CIO, in prescribing minimum dues for directly affiliated locals is not subject to federal statutory inhibitions, and that Local 3036 was obliged to respect the Federation's mandate without putting it to a vote of the Local's membership, the plaintiffs' other claims fall by their own weight for they have no independent content.

CONCLUSION

For all the foregoing reasons, we respectfully urge that the judgment below be affirmed.

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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK,
CITY OF NEW YORK,
COUNTY OF New York, ss.:

Julie Nelson, being duly sworn, deposes and says that he is over 18 years of age. That on the 30th day of January, 1976, he served 3 copies of the within Defendant's Appellee's Brief upon Kenneth J. Tanzer, the attorney for the above-named Defendant-Appellee by depositing 3 copies of the same securely enclosed in a post-paid wrapper in a branch depository maintained and exclusively controlled by the United States Post Office at 14 Mamaroneck Avenue, White Plains, N.Y. Canal & Church Streets above N.Y.C. addressed to said attorney for the at No. 14 Mamaroneck Avenue White Plains, N.Y. 10601, that being the address within the State designated by him for that purpose upon the preceding papers as the place where he regularly kept an office, and at which place he regularly received mail.

Sworn to before me this
30th day of January, 1976.

Julie Nelson

Mary Casella
Notary Public

MARY CASELLA
Notary Public, State of New York
No. 31-0502250
Qualified in New York County
Commission Expires March 30, 1978